APPELLEE'S APPENDIX

The Insurance Code of 1947 (45 Stat. 322-473) "An ACT To Provide An Insurance Code For The State of South Carolina; To Provide For The Appointment and Election of An Insurance Commissioner and a Deputy Insurance Commissioner; To Provide For Their Terms of Office and Powers; To Terminate The Term of Office of The Present Insurance Commissioner; To Regulate Insurance Companies; To Provide For The Organization of Insurance Companies; To Provide For The Admission of Foreign Insurance Companies; To Provide For The Licensing of Insurance Agents, Insurance Brokers and Insurance Adjusters; To Provide For The Regulation of Insurance Rates and To Prohibit Unfair Methods of Competition and Unfair Practices In The Business of Insurance and To Further Regulate Insurance Companies, Their Agents, Brokers and Adjusters and to Further Provide For The Regulation of The Insurance Business; To Provide Penalties For The Violations of The Provisions Thereof, and To Repeal Articles 1, 2, 3, 4, 5, and 5-a and Every Section Contained Therein of Chapter 157 of Volume 4 of The Code of Laws of South Carolina, 1942, As Amended."

Sec. 13 (45 Stat. 327) "COMMISSIONER APPROVE ISSUANCE OF CHARTERS TO INSURANCE COMPANIES—APPROVE FOREIGN INSURANCE COMPANIES DOING BUSINESS IN STATE.—It shall be unlawful for the Secretary of State to issue any charter to any insurance company of whatever kind or permit any foreign insurance company to do business within this State, without the written approval of the Commissioner" . . . .

Sec. 65 (45 Stat. 350) "NOT TO PAY DEATH BENEFITS IN SERVICE—NOT ISSUE POLICY PROVIDING FOR SETTLEMENT OF BENEFITS IN MERCHANDISE OR SERVICES—PENALTY.—It shall be unlawful for any insurance company to make payment or settlement of death benefits under policies written by such companies in merchandise or services rendered or agreed to be rendered or to issue any policy which provides for settlement in merchandise or service rendered or to be rend-

ered. Any insurance company violating the provisions of this section shall be liable to a penalty of ten (10) times the amount of such policy, certificate or other evidence of insurance to be collected in a suit by the heirs-at-law of such deceased policyholder. Any officers, agents or servants of any insurance company violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by a fine of not more than one thousand ($1,000.00) dollars, or suffer imprisonment on the county chaingang or in the state penitentiary for a period of not more than one (1) year in the discretion of the court."

Sec. 69 (45 Stat. 351) "REVOCATION OF LICENSE; PUBLICATION OF NOTICE; INJUNCTION AND RECEIVER.—If the Commissioner is of the opinion upon examination or other evidence that a company is in an unsound condition, that it has failed to comply with the law or with the provisions of its charter, or that its condition is such as to render its proceedings hazardous to the public or to its policyholders, or that the true value of its assets, if it is a life insurance company, are less than its liabilities, exclusive of its capital or if its officers or agents refuse to submit to examination or to perform any legal obligations relative thereto, he shall revoke, or suspend all certificates of authority granted to said company, its officers or agents, and shall cause notices thereof to be published in a newspaper of general circulation in this State, and no new business shall thereafter be done by it or its agents in this State while such default or disability continues, nor until its authority to do business is restored by the Commissioner. . . .

Sec. 101 (45 Stat. 362) "FORMS TO BE APPROVED BY COMMISSIONER.—It is unlawful for any insurance company doing business in this State, to issue or sell in this State any policy, contract or certificate until the forms of the same have been filed with and approved by the Commis-

sioner. PROVIDED, this Section shall not apply to surety contracts or fidelity bonds nor to insurance contracts, riders or endorsements prepared to meet special, unusual, peculiar or extraordinary conditions applying to an individual risk."

SEC. 107 (45 Stat. 364) "AGENTS LICENSE—APPLICANTS FOR EXAMINATION—AGENT'S QUALIFICATION—FEES—REVOCATION OR SUSPENSION—PREMIUM VOLUME.—Before doing business in this State for any Insurance Company, Association, or Society, each applicant for an agent's license shall stand an examination, as prescribed by the Commissioner on blanks furnished by the Commissioner, which blanks shall require the following information: Full name, age, residence, qualifications for such license, knowledge of the insurance laws of this State, what experience in insurance applicant has had, whether he ever had a license suspended or revoked or refused by any State, whether he has ever been in default in any indebtedness to any insurance company or ever had an agent's contract canceled, and if so, the reason for the cancellation, and submitting a complete history of his employment for three years prior to the date of the application, all of said information to be given under oath . . . .

Before issuing such license, the Commissioner shall determine, from the examination, that the applicant for an agent's license is a competent and trustworthy person to engage in the classification of insurance business he intends to engage in. The Commissioner shall have power to revoke said license after ten (10) days notice or refuse to reissue said license when it shall appear that an agent has violated the laws of this State or has willfully deceived or dealt unjustly with the citizens of this State. When upon investigation, it is found by the Commissioner that an agent has obtained a license by fraud or misrepresentation, he shall have power immediately to suspend said license . . .

That all applicants for an insurance agent's license shall be vouched for by an official or a licensed representative of the Company for which he proposes to act, who shall certify whether the applicant has been appointed an agent to represent such company, and that such company has duly investigated the character and record of such person, and has satisfied itself that he is trustworthy and qualified to act as its agent and intends to hold himself out in good faith as an insurance agent." . . .

Art. 12 (45 Stat. 463-473) "Unfair Methods of Competition and Unfair and Deceptive Acts and Practices in the Business of Insurance.

Sec. 1: DECLARATION OF PURPOSE.—The purpose of this Article is to regulate trade practices in the business of insurance in accordance with the intent of Congress as expressed in the Act of Congress of March 9, 1945 (Public Law 15, 79th Congress), by defining, or providing for the determination of all such practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined."

Sec. 3: "UNFAIR METHODS OF COMPETITION OF UNFAIR AND DECEPTIVE ACTS OR PRACTICES PROHIBITED.—No person shall engage in this State in any trade practice which is defined in this Article as, or determined pursuant to this Article to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance."

Sec. 4: "UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS OR PRACTICES DEFINED.—The following are hereby defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

(1) Misrepresentation and false advertising of policy

contracts. Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon, or making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies, or making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates, or using any name or title of any policy or class of policies misrepresenting the true nature thereof, or making any misrepresentation to any policyholders insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender his insurance.

(2) False information and advertising generally. Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated or placed before the public in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio station, or in any other way, an advertisement, announcement or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business, which is untrue, deceptive or misleading.

(3) DEFAMATION.— Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting or encouraging the making, publishing, disseminating or circulating of any oral or written statement of any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of an

insurer, and which is calculated to injure any person engaged in the business of insurance.

(4) Boycott, Coercion and Intimidation.— Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance.

(5) False financial statements.— Filing with any supervisory or other public official, or making, publishing, disseminating, circulating or delivering to any person, or placing before the public or causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of an insurer with intent to deceive.

Making any false entry in any book, report or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any affairs, or any public official to whom such insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, wilfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report or statement of such insurer.

(6) Stock operations and advisory board contracts.— Issuing or delivering or permitting agents, officers, or employees to issue or deliver, agency company stock or other capital stock, or securities or any special or advisory board contracts or other contracts of any kind promising return and profits as an inducement to insurance.

(7) Unfair discrimination.— (a) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in

the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.

(b) Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever.

(8) REBATES.—(a) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of life insurance, life annuity or accident and health insurance, or agreement as to such contract other than is plainly expressed in the contract issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such insurance or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract.

(b) Nothing in clause 7 or paragraph (a) of clause 8 of this subsection shall be construed as including within the definition of discrimination or rebates any of the following practices: (1) in the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, providing that any such bonuses or abatement of

premiums shall be fair and equitable to policyholders and for the best interest of the company and its policyholders. (ii) in the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense (iii) readjustment of the rate of premium for a group insurance policy based on the loss or expense experienced thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year."

Sec. 5: "Power of Commissioner.—The Commissioner shall have power to examine and investigate into the affairs of every person engaged in the business of insurance in this State in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by Section 3 of this Article."

Sec. 6: "Hearings, Witnesses, Appearances, Production of Books and Service of Process.—

(a) Whenever the Commissioner shall have reason to believe that any such person has been engaged or is engaging in this State in any unfair method of competition or any unfair or deceptive act or practice defined in Section 4, and that a proceeding by him in respect thereto would be to the interest of the public, he shall issue and serve upon such person a statement of the charges in that respect and a notice of a hearing thereon to be held at a time and place fixed in the notice, which shall not be less than thirty (30) days after the date of the service thereof.

(b) At the time and place fixed for such hearing, such person shall have an opportunity to be heard and to show cause why an order should not be made by the Commis-

sioner requiring such person to cease and desist from the acts, methods or practices so complained of. Upon good cause shown, the Commissioner shall permit any person to intervene, appear and be heard at such hearing by counsel or in person.

(c) Nothing contained in this Article shall require the observance at any such hearing of formal rules of pleadings or evidence.

(d) The Commissioner, upon such hearing, may administer oaths, examine and crossexamine witnesses, receive oral and documentary evidence, and shall have the power to subpoena witnesses, compel their attendance and require the production of books, papers, records, correspondence, or other documents which he deems relevant to the inquiry. The Commissioner, upon such hearing, may, and upon the request of any party shall, cause to be made a stenographic record of all the evidence and all the proceedings had at such hearing. If no stenographic record is made and if a judicial review is sought, the Commissioner shall prepare a statement of the evidence and proceeding for use on review. In case of a refusal of any person to comply with any subpoena issued hereunder or to testify with respect to any matter concerning which he may be lawfully interrogated, the Circuit Court of Richland County or the County where such party resides, on application of the Commissioner, may issue an order requiring such person to comply with such subpoena and to testify and any failure to obey any such order of the Court may be punished by the Court as a contempt thereof.

(e) Statements of charges, notices, orders, and other processes of the Commissioner under this Article may be served by anyone duly authorized either in the manner provided by law for service of process in civil actions, or by registering and mailing a copy thereof to the person affected by such statement, notice, order, or other process

at his or its residence or principal office or place of business. The verified return by the person so serving such statement, notice, order or other process, setting forth the manner of such service shall be proof of the same, and the return postcard receipt for such statement, notice, order, or other process, registered and mailed as aforesaid, shall be proof of the service of the same."

Sec. 7: "CEASE AND DESIST ORDERS AND MODIFICATIONS THEREOF.—

(a) If, after such hearing, the Commissioner shall determine that the Method of competition or the act or practice in question is covered by Section 4 of this Article and that the person complained of has engaged in such method of competition, act or practice in violation of this Article, he shall reduce his findings to writing and shall issue and cause to be served upon the person charged with the violation an order requiring such person to cease and desist from engaging in such method of competition, act or practice . . . .

Sec. 9: "PROCEDURE AS TO UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS OR PRACTICES WHICH ARE NOT DEFINED . . . .